Questions of M. S.
Charge to

LC14
103
v.2

5th Feb. 1791.

Question on an assigned Bond

Mr Condy Pro.

1. What the Law of England. 2 What the Law of Pennsylvania.

1. Principles and Precedents

Inn. 214. 2. Bl. 442.

Chose in Action assignable in Equity.

Bac. 157. 2 Vern. 595. 428. Ch. Ca. 232.

Courts jus <u>dicunt</u>.

2. a. a. 77. Dallas. 23. 440.

Mr Rippele Cont.

1. 3 & 4 An. extends here

2. The Assn of a Bond in the same situation with the Indorsm of a Note

3. This case not within the Defalcation Act

Ney

Very little Specie in Circulation when this Law was made.

"to encourage Trade, Commerce and Credit."

S. 3. "appear" to be due

The Payment should be indorsed upon the Bond

a Court of Chancery subsisted in ~~Chancery~~ Penn. when this Law was made — Where was the Necessity of this Law, if confined, as the other side would have it.
Obligor should advertise the Payment.

An Advertisement by Ex. to pay wd take a Debt out of the Statute of Limitations.

When this Law passed, inland Bills were not known in this Country.

3. { A. A. 48 — Confined to those who have mutual Dealings.
165 Expressio unius, exclusio alterius

2. Geo. 2. c. 22. } A Debt due to a Man in Right of his Wife cannot be set off.
8. Geo. 2. c. 4 }

Wil. 155. The Stat. of Set off shall not operate against the Assn. of a Bankrupt.

2. Term. Rep. 65. The Obligor the original Cause

Dallas 178

Mr

Mr Evans. Cro.

Rome under the discretionary Power of the Praetor.
Lex Cornelia. — the perpetual Edict. — The Principle of it observed in England.

If 3 Jac. 1. be extended; why was the Act of Assembly past?

The Intention of the Act is to enable the Assee in his own Name, and to prevent a subsequent Release of the Obligee.

Mr Hopkinson. Cont.

Distinction between the Assignment of a Bond now at Law, and one voidable by something subsequent

Def. might have waived this Plea.

Equity should pass for what appears on the Face of the negotiable Instrument

The Presumption of Combination is against the Obligor and the Obligee

2. Freem. 258.

Dallas. 26.

2. Cro. 32. Impudence of Obligor.

Id. 134. Assee in better Condition than Assor.

"mentioned in Bond" — Payment may be considered as a Trust — Holder of a lost or stolen Note

"In

"In like Manner" does not extend to "like Right." —

As a Payment, it cannot be pleaded: if, it can be taken advantage of at all; it must be under the Act of Defalcation.

Suppose the Payment had been made by Fraud; could it be moved back from the Office.

Suppose the Bond had been overpaid; could the Surplus be moved against the Office.

Mr. Coady in Reply —

11th July 1790

Should real and personal Property, in the United States, run in the same Course of Representation or Succession?

In England, the Succession to these two different Kinds of Property runs in very different Channels. With Regard to real Estate, the ancient Custom of the Realm is, that the eldest Son is only Heir to his Ancestor. Personal Property is divided among all the Children.

Even in England, if there be no Sons, but Daughters, then all the Daughters shall be Co-heiresses of real Estates in Land. And so it is with Regard to Sisters and other female Relations.

It must be - it has been allowed, that the Right of Primogeniture in Succession is in Opposition to the Feelings of natural Justice; and that it has been introduced and can be supported only by Considerations of Expediency. The eldest of the Sons, being commonly the first, who acquired Experience

and

+ Mit. 185.

+ Kudeh. 356, 357.
(180.)

and Reputation in War, was, upon the Death of the Parent, admitted to be the Leader and Head of the Family; And when a general Practice in his Favour had once been established from the ordinary Course of Things; it was maintained by the Force of Custom, even in singular Cases, where he had not the same Superiority.

The Notion of one Representative, succeeding to all the Rights of his Ancestor has no Foundation in Nature, according to the Sentiments of Dr. Hutcheson, an eminent Writer on moral Philosophy; nor is there any Reason why a far greater Part of the Inheritance should go universally to one of many Children, or one of many in the same Degree; nor why Seniority among Children, or Kinsmen of the same Degree should have such Preference, nor why the Distinction of Sex should, in the first Degree of Children, take Place of all other Considerations; and yet be quite neglected in the Degree of Grandchildren.

In

In rude and early Periods of Society, it is common, that the Children should be altogether supplanted by the Brothers, and other collateral Relations; who, by having arrived at greater Maturity, and possessing superior Prowess, are enabled to put themselves at the Head of their Kindred.

Thus, we are told, in many of the Border or petty Nations upon the Coast of Guinea, the Children inherit Nothing from the Father but his Arms; his other Effects being carried off by the older Relations of the Family.

In the Succession of the ancient Kings of Numidia, the Brother, as we are informed by Livy, was preferred to the Children of the preceding Monarch. A similar Practice prevails, at present, in the Ladrone Islands.

Of the Preference of the Brothers to the direct Descendants, there are many Traces in the ~~most~~ early History

of

+ Mid. 186. 187.

[1. Paley 230.]

of modern Europe. Among the Saxon Kings, even after the Reign of Egbert, we meet with four Instances of it; — Alfred the Great — Edred — and Ethelred, each of whom succeeded to a Brother; and Edwy, who succeeded to an Uncle — in Preference to the Children of the Predecessor.

One Reason, drawn from the Nature of Things, has been suggested for making a Difference between the Succession to real, and that to personal Property. Land is not so divisible as Money; and, therefore, it is said, there may be a Reason for making a Difference in the Course of Inheritance; but, it is added, there ought to be no Difference except what is founded on that Reason.

It is certainly excusable — nay it is certainly laudable to seize every decent Opportunity of exhibiting to View Improvements and Excellences in our own System of municipal Laws — Improvements and Excellencies, which have diffused their most salutary

salutary Influence; while the true Value of their Spirit and Operation has been unheeded and unknown. Their Effects have been enjoyed; but no Enquiry has been made concerning the Cause, which produced them.

~~Because~~ When Lands are not easily divided; therefore they should go to one of the Children: This is the Genius of Mr Paley's Doctrine. May not some middle Way be found out? May not the Inconvenency of dividing the Land; and, at the same Time, the greater Inconvenency of disinheriting all the Children, except one, in order to prevent an inconvenient Division, be equally avoided?

All this is done by a Law of Pennsylvania. By that Law it is provided, that where any Estate in Lands cannot be divided among the Children, without injuring or spoiling it, the Orphan's Court may, upon a proper Representation of this Fact, order the whole Land to the eldest Son, if he shall accept it, and afterwards

1. a. 308.

= 2. Bl. 215.

A.

It is only in the Term of Prescription that the Distinction of real and personal Fortune has been remarked by the Civilians; and their general Idea of Property is that of simple, uniform and absolute Dominion. The subordinate Exceptions of Use, of Usufruct, and Servitudes imposed for the Benefit of a Neighbour on Lands and Houses, are abundantly explained by the Professor of Jurisprudence.

Gib. c. 44. p. 323.

*Gib. c. 44 p. 324.

-terwards to the other Sons, and then to the Daughters successively; they paying, or giving sufficient Security to pay to the other Children their equal and proportionable Parts of the true Value of the Land. This true Value is to be ascertained by an Appraisement made agreeably to the Directions specified in another Law.+

Among the Jews, the eldest Son had a double Portion of the Inheritance. The Greeks, the Romans, and the Britons divided their Lands equally; some among all the Children, others among the Males only.

With Regard to Succession, the Romans certainly made no Distinction between real and personal, moveable and immoveable Estate.* A

We have every Reason to suppose that the Saxons also made no Distinction between real and personal Property, as to Succession or Representation. The whole Property of a Man came under the general Description of res; and under that Denomination was subject

to

+ Rem. 7.

N. Box. 68.

to the same Succession ab intestato; and might be given or disposed of by Will.†

Among the Saxons, says Bacon in his Discourses on Government, Goods passed by Descent as well as Lands. The Ordinaries, therefore had, among them, Nothing to do with the Administration: And upon this Custom the Wise de rationabile parte bonorum was grounded at the Common Law, as well for the Children as the Wife's Part, as by the Body of the Writ may appear.*

A. From P. 31.

By the Law of the United States, to which I have frequently directed your Attention, it is enacted, that if any Person or Persons shall falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or willingly act or assist in the false making, altering, forging or counterfeiting any Certificate, Indent, or other public Security of the United States, or shall utter, put off, or offer, or cause to be uttered, put off, or offered in Payment or for Sale any such false, forged, altered or counterfeited Certificate, Indent or other public Security, with Intention to defraud any Person, knowing the same to be false, altered, forged or counterfeited, and shall be thereof convicted, every such Person shall suffer Death.

To forge says my Lord Coke, is metaphorically taken from the Smith, who beatith upon his Anvil, and forgeth what Fashion or Shape he will. The Offence is

The Institution of Juries is unquestionably a most valuable Part of our juridical System. Juries have been known in several Countries and to several Laws. It is ~~the~~ an Opinion, ~~of some~~ not improbable, that their substantial Parts of their Functions may be traced to the Romans, nay to the Greeks, particularly the improved Athenians.

The Institution of Grand Juries is, however, at least in the present Times ~~far or peculiar~~, the peculiar Boast of the Common Law. And we may venture to say without Danger of a Refutation, that there cannot be found, in the Annals of the World, an Institution ~~Regulation~~ so well adapted for ~~preventing~~ warding Aliens, which might otherwise arise from ~~the~~ regards or from the negligence in the Prosecution of Crimes.

Among the Romans, any one of the Citizens, as well as the Person more immediately injured, was allowed to prosecute a public Offence. This Mode produced Mischiefs of very ~~different~~ opposite Kinds. Prosecutions were con-

is called Crimen falsi, ~~and~~ the Crime of Falsehood, and the Offender Falsarius, a Falsifier, and the Latin Word to forge is falsare or fabricare. And this is properly taken when the Act is done in the Name of another Person. (3. Ins. 169.)

Falsely to make, says the same respectable Authority, are larger Words than to forge; for one may make a false Writing without the Act (he speaks of the 5th Eliz. c. 14. in which the Words used are substantially the same with the Words of the Law now under our Consideration as to the present Point) though it be not forged in the Name of another, nor his Seal nor Hand counterfeited. As if a Man make a true Deed of Feoffment under his Hand and Seal of the Manor of Dale unto B. and B. or some other raze out D. and put in S. and then where the true Deed was of the Manor of Dale, now it is falsely altered and made the Manor of Sale. This is a

false

ducted at some Times on Principles of Rancour and Revenge: On other Occasions, a Friend, perhaps a Confederate of the Criminal undertook to prosecute him, with a View to ensure his Impunity. This was the Case in the Instance of the infamous Verres. Cecilius, his Questor and Associate, disputed with Cicero the Right of accusing him. The Preference was adjudged to Cicero in a Process known by the Name of Divination.

In several of the feudal Nations, the Judge himself was originally the Prosecutor. Such a Regulation must be ~~attended with~~ self evident ~~Impropriety~~. The Impropriety of to Attach your Birth remove the Mischiefs ~~proceeding from it~~, a public Prosecutor was appointed to manage the judicial Business of the Crown before the proper Tribunals. Hence, in all Probability the Origin of the Office of Attorney General in England.

That ~~But before~~ Crimes ~~can~~ may be prosecuted, duly and impartially, regular it is proper and necessary that Information

false Writing within the Purview of this Statute. So it is if a Rent Charge of one hundred Pounds by the Year be granted out of Land, and the Grantee or any other raze out one, and instead thereof writeth two; this is a false Writing within the Danger of this Statute. [3. Inst. 169.].

To utter, put off, or offer, or cause to be uttered, put off, or offered in Payment or for Sale any false, forged, altered or counterfeited Certificate, Indent or other public Security is not within this Law, unless the Party knew the same to be false, altered, forged or counterfeited.

This Knowledge, says my Lord Coke may come by two Means, either of his own Knowledge, or by the Relation of another. As if A. telleth B. that such a Deed is false and forged, and yet B. notwithstanding presumes to publish this to be a true Deed; and afterwards it falleth out by Proof that the Relation of A. was true, and the Deed in Truth was forged; B. is in Danger of this Statute [3. Inst. 171.].

Artificial

and authentic Information of their Evidence ~~must~~ should be obtained. To furnish this was one great Object of the Appointment of Coroners. To supply Deficiencies in the Information furnished by the Coroner, the Sheriff was directed upon the Meeting of Courts having criminal Jurisdiction to summon a Jury, who might make Enquiry and give Intelligence concerning the Crimes committed in particular Districts. This was, probably the Origin of Grand Juries. The Commencement and the gradual Progress and Improvements of the Institution are concealed behind the Veil of remote Antiquity.

Sometimes the Grand Jury bring forward Accusations of their own proper Motion: at other Times, upon ~~particular Information~~ they present a particular Charge laid before them by the Prosecutor ~~for the Crown or the Public~~ Public. These two Modes are ~~known by the Names~~ distinguished by well known Appellations of Presentment and Indictment.

In

Artful Contrivances to avoid the Force and Application of a Statute

In both it is the Right and the Duty of a Grand Jury to enquire diligently and to present truly.

It is your immediate Business to make Enquiries concerning such Crimes and Offences as may have been committed against the Constitution & Laws of the United States, and are cognizable by this Circuit Court held for the District of Pennsylva.

To assist you in your Enquiries, it will be proper to describe to you the Jurisdiction, which, in criminal Matters, is vested in the Circuit Courts.

They have "exclusive Cognizance of all Crimes and Offences cognizable under the Authority of the United States, except where it is or shall be otherwise provided by Law; and they have concurrent Jurisdiction with the District Courts, of the Crimes and Offences cognizable therein.

The

The Crimes and Offences cognizable in the District Courts are those "cognizable under the Authority of the United States, committed within their respective Districts, or upon the high Seas; where no other Punishment than Whipping, not exceeding thirty Stripes, a Fine, not exceeding one hundred Dollars, or a Term of Imprisonment, not exceeding six Months, is to be inflicted.

Of the Crimes and Offences known to the Constitution and Laws of the United States, and of the Punishments denounced against them, I shall give the following plain and concise ~~or plain and or concise and shall be in my Power to do~~ you an Account,

Treason against the United States consists only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be attainted of Treason, unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

No

No Attainder of Treason shall work Corruption of Blood, or Forfeiture, except during the life of the Person attainted.

With Regard to Treason, ~~that Crime sometimes so atrocious, sometimes so problematical~~, a new and great Improvement has been introduced ~~by the~~ into the Government of the United States. Under that Government, the Citizens have not only a legal but a Constitutional Security against the Extension of the Crime, or the Imputation of Treason. Treasons, capricious, arbitrary and constructive, have often been the most tremendous Engines of despotic or of legislative Tyranny. Even in England, there have been Times, when, in the emphatic Language of Parliament itself, so many Pains of Treason were ordained by Statute, that no Man knew how to behave himself, to do, speak or say, for Doubt of such Pains. With such Times the United States cannot be visited

cannot be violated, while their present excellent Con-
-stitution shall continue in Force. Under its pro-
-tecting Wings, the Citizens are covered from the
Fury even of legislative Tempests.

As the Crime of Treason is correctly and
permanently ascertained; so its Punishment
is restricted to the proper Object. The innocent are
not involved in the Fate and Ruin of the guilty:
The Rights of Blood and of Inheritance are respect-
-ed and preserved.

By ~~an Act~~ Law for the Punishment of certain Crimes
against the United States, it is enacted, that Persons,
adjudged guilty of Treason against the United States,
shall suffer Death; and that the Manner of in-
-flicting the Punishment of Death, shall be by
hanging the Person convicted by the Neck until
dead.

Even where it is deemed necessary that the

Cast

+ 4. Bl. 92

last Punishment should be inflicted; there are many Degrees of Severity and Mildness in the Mode of inflicting it.

In England, the Punishment of Treason contains all the numerous Particulars ~~included in~~ comprehended under the following terrible Description: That the Offender be drawn to the Gallows, and not be carried or walk; though usually a Sledge or Hurdle is allowed, to preserve him from the extreme Torment of being dragged on the Ground or Pavement: That he be hanged by the Neck, and then cut down alive: That his Entrails be taken out, and burnt, while he is yet alive: That his Head be cut off: That his Body be divided into four Parts: That his Head and Quarters be at the Kings Disposal.

With Regard to this Judgment, let us observe, in the Words of an English Lawyer, that it degrades

+2. Dez. 9. 10.

disgraces Humanity, without answering the Ends of Policy; that it is more than Cruelty; that it is such a savage Butchery as might even shame a Hottentot. It seems difficult, says he, to conceive, that such a Judgment could have been devised by a human Being; or having been established in the Days of Ignorance, Bigotry and Barbarity, that it should be suffered to continue at the present civilized and enlightened Period.

By the ~~Act of~~ Laws of the United States before mentioned it is enacted, that if any Person or Persons, having Knowledge of the Commission of any of the Treasons aforesaid, shall conceal and not as soon as may be disclose and make known the same to the President of the United States, or some one of the Judges thereof, or to the President or Governor of a particular State, or some one of the Judges or Justices thereof; such Person or Persons on Conviction shall be adjudged guilty

of

of Misprision of Treason, and shall be imprisoned not exceeding seven Years, and fined not exceeding one thousand Dollars.

By the same law it is also enacted that if any Person or Persons shall, within any Fort, Arsenal, Dock-yard, Magazine, or in any other Place or District of Country, under the sole and exclusive Jurisdiction of the United States, commit the Crime of wilful Murder, such Person or Persons on being thereof convicted shall suffer Death; and that if any Person or Persons shall, within any Fort, Arsenal, Dock-yard, Magazine, or other Place or District of Country, under the sole and exclusive Jurisdiction of the United States, commit the Crime of Manslaughter, and be thereof convicted, such Person or Persons shall be imprisoned not exceeding three Years, and fined not exceeding one thousand Dollars.

By the same law it is enacted, that if any Person

Person or Persons shall commit upon the high Seas, or in any River, Haven, Basson or Bay, out of the Jurisdiction of any particular State, Murder or Robbery, or any other Offence, which if committed within the Body of a County, would by the Laws of the United States be punishable with Death; or if any Captain or Mariner of any Ship or other Vessel, shall piratically and feloniously run away with such Ship or Vessel, or any Goods or Merchandize to the Value of fifty Dollars, or yield up such Ship or Vessel voluntarily to any Pirate; or if any Seaman shall lay violent Hands upon his Commander, thereby to hinder and prevent his fighting in Defence of his Ship or Goods committed to his Trust, or shall make a Revolt in the Ship; — every such Offender shall be deemed, taken and adjudged to be a Pirate and Felon, and being thereof convicted, shall suffer

Death

Death; and the Trial of Crimes committed on the high Seas, or in any Place out of the Jurisdiction of any particular State, shall be in the District where the Offender is apprehended, or into which he may first be brought.

By the same Law it is enacted, that if any Seaman or other Person shall commit Manslaughter upon the high Seas, or confederate, or attempt or endeavour to corrupt any Commander, Master, Officer or Mariner, to yield up or to run away with any Ship or Vessel, or with any Wares Goods or Merchandize, or to turn Pirate, or to go over to or confederate with Pirates, or in any wise trade with any Pirate knowing him to be such, or shall furnish such Pirate with any Ammunition, Stores or Provisions of any Kind, or shall fit out any Vessel knowingly and with a Design to trade

with

with or supply or correspond with any Pirate or Rob-
-berer on the Seas; or if any Person or Persons shall any
Ways consult, combine, confederate or correspond
with any Pirate or Robber on the Seas, knowing
him to be guilty of any such Piracy or Robbery;
or if any Seaman shall confine the Master of any
Ship or other Vessel, or endeavour to make a Re-
-volt in such Ship; — such Person or Persons so of-
-fending, and being thereof convicted, shall be con-
-fined not exceeding three Years, and fined not
exceeding one thousand Dollars.

In the foregoing Clauses the Crimes of Murder, and Manslaughter, ~~& Piracy~~ are not defined or de-
-scribed. Reference, therefore, is necessarily to be
made to some pre-existing Law for the Descrip-
-tion or Definition of those Crimes. To what pre-
-existing Law must the Reference be made? This

in a Question of immense Importance and Extent. I answer; but cannot, in this Address, assign the Reasons for my Answer — to the Common Law. To the Common Law, then, Recourse must be had for the Definition or Description of those Crimes, which we have mentioned; that you may be enabled to weigh and Measure such Facts, as may come before you by the Standard of those Definitions or Descriptions.

In our Law Books, Murder is described in the following Manner — Murder is when a Man of sound Memory, and of the Age of Discretion unlawfully killeth, within any County of the Realm, any reasonable Creature in Being, and under the King's Peace, with Malice afore-thought, either express or implied, so as the Party wounded or hurt, die of the Wound or Hurt, within a Year and a Day after the same. 3. Inst. 47. 4. Bl. 195. Fost. 302. 303.

Manslaughter is thus described — the unlawful killing of another, without Malice, either express or implied

-plied; which may be either voluntarily, upon a sudden Heat; or involuntarily; but in the Commission of some unlawful Act. 4. Bl. 191.

Manslaughter arises from the sudden Heat of upon some Provocation given or received (Foster 290.) the Passions; Murder from the deliberate Wickedness of the Heart. 4. Bl. 190.

The Distinction, strongly marked by the Law between them, is, that Murder is connected with, but Manslaughter without Malice aforethought.

It is ~~confounded~~ simples, therefore, to know clearly and ~~a~~ accurately the true and legal Import of this characteristic Distinction.

There is a very considerable Difference between that Sense, in which the Expression Malice is used in common Language, and that ~~Meaning~~, to which the Term is appropriated by the Law. In common language it is most frequently used to denote a strong Sentiment or Passion of Malevolence to a particular or a settled Anger in the Person against another, and a Desire of Revenge (L. R. 487.) ~~or a Person~~. In Law, it means the Deliberate

of

of a wicked, depraved and malignant Heart. (4. Bl. 199. Fost. 256) ~~The Word is often used and understood as meaning a wicked~~ perverse, incorrigible Disposition (Fost. 257.) ~~In particular~~ Accordingly, many of the Cases which are ranged under the Head of implied Malice will be found to turn upon this single Point that the particularly, the Circumstances of Deliberation and Cruelty con- Fact hath been attended with such Circumstances, curring (Fost. 138.) and genuine Symptoms (Fost. 291) as carry with them the plain Indications of an and deliberately (Fost. Heart regardless of social Duty and fatally bent 278) upon Mischief (Fost. 257) — of a Mind grievously depraved, and acting from Motives highly criminal. Fost. 138. This is the genuine Notion of Malice in the legal ~~our Law~~ sing of the Word. Fost. 291. Fost. 138. This mischievous Ingredient must always be collected from the Circumstances. Fost. 271.

~~Lord Chief Justice Holt~~ In delivering the Opinion of the Judges on the special Verdict found against Mangridge, Lord C.J. Holt states the following Case. Suppose, upon provoking Language given by B. to A. A. gives B. a Box on the Ear, or a little Blow with a Stick, which happens to be so unlucky that it kills B. who might have

some Imposthume in his Head, or other Ailment, which proves the Cause of his Death; this Blow, says he, though not justifiable by Law, but is a Wrong, yet it may be but Manslaughter, because it doth not appear that he designed such a Mischief. (Kel. 131. See Hale. 428.) But says (See P. 30.

These Observations may be of some Use in assisting you to form a proper Opinion concerning Murder and Manslaughter. The Law of the United States, which I have mentioned, as you have heard, enacts, that if any Person shall commit upon the high Seas, or in any River, Murder, or any other Offence, which if committed within the Body of a County, would, by the Laws of the United States, be punishable with Death; — such Offender shall be deemed, taken and adjudged to be a Pirate and Felon; and being thereof convicted, shall suffer Death; and his Trial shall be in the District where he is apprehended, or into which he is first brought.

This naturally directs our Attention to the Crime of Piracy.

The Word Pirat, says my Lord Coke, in Latin

Piratae

Pirata, is derived from the Greek Πειρατης, which is again ~~fet~~ fetched from πειρᾶι, a transmonde man, or roving upon the Sea; and therefore in English a Pirate is called a Rover or Robber on the Sea. 3. Inst 113.

The Crime of Piracy, says Sir William Blackstone, or Robbery and Depredation upon the high Seas, is an Offence against the universal Law of Society; a Pirate being, according to Sir Edward Coke, hostis humani generis. As therefore he has renounced all the Benefits of Society and Government, and has reduced himself back to the savage State of Nature, by declaring War against all Mankind, all Mankind must declare War against him: So that every Community hath a Right, by the Rule of Self-defence, to inflict that Punishment upon him, which every Individual would, in a State of Nature, have been otherwise entitled to do, for any Invasion of his Person or personal Property. 4. Bl. 71.

This Crime, by the Common Law, consists in committing those Acts of Robbery and Depredation, on

on, upon the High Sea, which, if committed on Land, would have amounted to Felony there. 4. Bl. 72.

Sec. 28. says my Lord Hale, if a Man be sick of some such Disease, which possibly by Course of Nature, would end his Life in Half a Year, and another gives him a Wound or Hurt, which hastens his End by irritating and provoking the Disease to operate more violently or speedily; this Hastening of his Death sooner than it would have been is Homicide or Murder as the Case happens, in him that gives the Wound or Hurt, for he doth not die simply ex visitatione Dei, but the Hurt that he receives hastens it, and an Offender of such a Nature shall not apportion his own Wrong, and thus I have often heard that learned and wise Judge Justice Rolle frequently direct. Hale. 428.

The

31. A. See Page 12

The same Law, which I have repeatedly mentioned, assigns Punishments to several other Crimes — ~~Forgery, and to to Forgery of any Certificate, Instrument or Writing Security of the United States, the Penalty Death~~ to Misprision of Felony, a Fine not exceeding five hundred Dollars and an Imprisonment not exceeding ~~twelve Months~~ three Years — to Maiming, a Fine not exceeding one thousand Dollars, and Imprisonment not exceeding seven Years — to a Confederacy with Pirates, or to become Pirates, a Fine not exceeding one thousand Dollars, and Imprisonment not exceeding three Years — to stealing or falsifying the Records of the Courts of the United States, a Fine not exceeding five thousand Dollars, Imprisonment not exceeding seven Years, and Whipping not exceeding thirty nine Stripes — to Larceny in Vessels under the sole and exclusive Jurisdiction of the United States, or upon the high Sea, a Fine not exceeding the fourfold Value of the Property stolen, and Whipping not exceeding thirty nine Stripes — to Perjury and Subornation

-nation of Perjury, a Fine not exceeding eight hundred Dol-
-lars, Imprisonment not exceeding three Years, the Pillory
for one Hour, and Incapacity to give Testimony — to
Bribery, Fine and Imprisonment at the Discretion
of the Court — to Rescue against Process, a Fine
not exceeding three hundred Dollars, and Imprison-
-ment not exceeding twelve Months — to a Rescue, a
Fine not exceeding four hundred Dollars, and Im-
-prisonment not exceeding one Year — to the Violation
of the Laws of Nations by suing Process for arresting
a public Minister, a Fine at the Discretion of the
Court, and Imprisonment not exceeding three Years —
to the Violation of a Safe-Conduct or Passport, and
to Assaulting, Striking, Wounding, imprisoning, or of-
-fering Violence to the Person of a public Minister, a
Fine at the Discretion of the Court, and Imprison-
-ment not exceeding three Years.

The Benefit of Clergy shall not be used or allow-
-ed upon Conviction of any Crime, for which, by any

Statute

Statute of the United States, the Punishment shall be declared to be Death. B

No Conviction or Judgment shall work Corruption of Blood, or any Forfeiture of Estate. A

The Laws for securing and enforcing the Collection of the Revenue of the United States are Objects highly meriting your Attention. ~~They are~~ By the Union, however, it is necessary ~~you~~ to enumerate them.

~~We now~~ I detain you no longer ~~from your Business and Duty in Grand Jury~~ from your Business. In the Course of ~~that~~ your Business and Duty you will find the Court always disposed to give you their best Assistance and Advice.

A By the ~~Provision~~ Regulation, just as well as humane, the Innocent are ~~exempted from~~ not involved in the Fate and the Power of the Guilty: The Rights of Blood and of Inheritance are respected and preserved.

B No Person shall be prosecuted for Treason or other capital Offence, except Murder or Forgery excepted, unless the Indictment for the same be found by a grand Jury within three Years next after the Treason or other capital Offence shall be committed: Nor shall any Person be prosecuted for any Offence not capital, nor for any Fine or Forfeiture under any penal Statute, unless the Indictment or Information for the same shall be found or instituted within two Years from the Time of committing the Offence, or incurring the Fine or Forfeiture: Those, however, who flee from Justice are not entitled to the Benefit of these Provisions

Thursday 17th July 1791

Mr W. Morris Rec. on the Question - Should Property be represented in Pennsylvania?

Recall the Reasons & the Object of gov. Property should be represented.

Representatives independent - only may be discarded at the next Election. Pl. 159 Members not responsible to their particular Constituents.

Property, however, is not to be solely represented.

1. Property in Election. 2. in Elected. both may be required

Where there are two Branches - there should be different Representations as to Property - particularly in the Senate

New Hampshire Senat. - and Representatives Massachusetts - Connecticut - New Jersey - So in all the other States So in Europe Gr. Britain. Pl. 158

Mr R. Morris. Cont.

The Principle of Representation as known to the Ancients — Personal Attendance the only Principle. Gov. of gov. Elections should be free and equal. Gov. Power in the People

People at large can be represented only by Suffrage: to deprive them of this Right is to deprive them of their Share of the sovereign Power. –

Representation and the Right of Representation should pervade the whole State.

If the wealthy were always the most wise, honest and considerate, there might be Use in a Representation of Property.

There are other and greater Objects of Care than Property

Safety – Character – the Rights of Conscience – these are Properties which will be represented

The Poor pay Taxes on their most Consumption. Beer &c.

Poverty and Prudence of no Weight against Principle

H. H. Clymer Esq.

Men might have security in Act of Nature but for Disputes concerning Property.

Jealousies of the Electors – Poverty frequently connected with Ignorance – Dependence – Bribery – Landed Interests now lower in Britain than formerly. Hume Hist. Ed. 6. – Shame to the Reasoner than Hear him – the Power of Lords – Balance.

Independence

Indiscriminate Election destroy liberty — they choose the rare complexion and ~~[illegible]~~ character. — Agrarian Laws — the former oppressive system of Taxation in France Sylla and Cinna

The Poor dependent on the Rich — particularly in manufacturing Countries — In England a single House in Manufactures employs 2000 Workmen: What a dangerous Influence if they had all Votes

This Example observed in the new Earth — Foreigners included. Saliure — Flemings Idle Life

Mr Hopkinson Cont

The Inhabitants are the principal Part of a Nation

Saxons & Greece — Spain

If the Poor have no Interest in the Govt why are they obliged to support it

The Interest of the People should be represented

More Instances of Mischiefs in the rich than in the Poor — the Poor are corrupted by the Rich

Shall we add Property to Religion?

Representation a Substitute for personal Appearance

Property represented through the Election.

The poor more necessary to the State than the Rich — The poor carried us through the late Revolution

Mr Mr Morris in Reply —

Mr President & Gentlemen, I know that strangers should give Respectability to Government

Saturday 19th Feby 1791

On the Question. whether Representatives are bound by the Instructions of those, who choose them.

Mr Gibson &c.

I take it upon the Principles of the Constitution — Representatives are only in the Place of those who send them

The People do not transfer their Rights, they delegate a Trust.

Positive Instructions are equal to personal Appearance

How can their Consent be supposed in Opposition to their declared Dissent.

All the People may instruct all the Representatives; therefore a Part may instruct a corresponding Part

It forms a Check upon the Legislature.

The greater Right of Instructing is not given up by reserving the Right of Petitioning.

A Person when chosen, represents only his own Electors: Counties they elect for the whole.

Burgh. 186. 192. 202. 19c.

The Practice of the House of Commons has been conformable to this Doctrine

Mr.

Mr Chapman Cont.

1. By the Const. he is not bound. S. 1.

2. Ex necessitate he ought not to be bound.

If Instructions were binding; the legislative Authority would not, as the Const. says it is, be vested in the Representatives

The Right of ~~Petitioning~~ Instruction is owned by ~~by~~ assuming the Right of Petitioning

Though the People may alter, the Const. it is binding on them till altered.

Mont. 10.

Would a Man construed as well as choose his Representative?

A Representative is chosen for the whole State, and therefore the Instructions of any other Citizens should have the same Weight as those of the Persons who chose them?

The Agent is inferior; a ~~Legislat~~ Representative, superior

Where the Necessity for two Houses of Instruction of the same People are binding?

Mr Read Pro.

Liberty is the Right of acting only under the Restrictions arising from the public good.

Original Light in the People.

The Necessity of delegating Power

Athens Lacedemon. Carthage. Rome — the People acted collectively. But their Sandes had the Rights of Sovereignty: It would have been better vice versa.

1. From History — 2. From Reason.

I. Tribunes of Rome — Swiss Republics — Confederation of the Cantons — France — Germany Detached from the Cities — Ireland — Provinces — England

1. In a Tyranny created by Consent

The Trust of the Representative is a Deposit of the Will of his Constituents

Without the Efficacy of Instructions the Representative would be independent of his Constituents

Instructions by a Sovereignty for the weal.

A Representative is responsible only to those who choose him. Instructions therefore flow from those, to whom he is responsible

Servants of the People

No

Mr Thomas Cont.

The Representatives are provided with the Powers of Legislation: Can they be bound by Instructions?

1. The difficulty of knowing the public Opinion
2. Incompatible with the Office of legislation
3. Indignity

1. This would lead to the same Confusion as if the People met personally

2. Contrary Instructions from different Districts — a necessary Confusion of Interests — Compromises could not be made.

3. Wisdom — Steadiness in the Representatives — why, if Nothing is intended — and if he is to go [illegible] to his Instructions?

Is the Indorser of a ~~promissory Note~~ Bill of Exchange discharged from the Payment of it by Acceptance of Part of the Money from the Drawer?

Saturday Feb 7 26th. 1841.

On the Question concerning the Line of Succession to real and personal Property should be the same.

Rodney Pro. Succession to real Estate derived from the Saxon System. — 1st at Will — 2 for Years 3 For Life. 4 By Will —

Antiently all Descendants inherited

Primogeniture — contrary to the Laws of Nature

Widow. Children — next of Kin —

Lands in this Country allodial — both sons & daughters at least — equally inherit

Not so desirable — in no Power

A. D. 33.

Mr Dickinson Cite Origin of property — Conquering — Labour — Common again on the Tenure of the Property — affirmative Succession by positive Rules — different Rules as to real and personal Estates — in Abeyance — Tenant — Inconvenience of devising lands — and of personal being personal Property to go undivided.

Mr

Mr Stephenson Cont. Pro.

Corporate Cons. upon Effects

The funded – a military government – only a few Chiefs – the rest liable to their sudden Call – hence Primogeniture

Primogeniture urgent and unequal – Burroughs English more natural –

Succession ab intestat – from Policy – and supposed Intention

Equal Succession encourages Population – and avoids excessive Poverty and Riches – improper in a republican government – Primogeniture connected with a feudal and unequal System

Mr Coventry Cont.

Indescribability of real Estate

1. As to Justice. 2. As to Policy

The Origin of Primogeniture on the first Year of Society –

The Case of the Family devolves on the eldest Son

Mont. l. 5. c. 5.

Saturday 5th March 1791

On the Question — Is the Indorser of a Bill of Exc.
discharged from the Payment of it, by Acceptance
of Part of the Money from the Drawer?

Mr Hippisley Pro — The affirmative is presumed by
no Suit being brought agt such Indorser

Dallas. 428 — Uniform Decisions.

Release an implied as well as express — as when Cr
makes his Dr Exr — So Acceptance of Part from Dr discharges
the Original Dr

Str. 745. Wil. 48. Bul. 273.

Burr. 676. Indorsed Notes similar to Bills of Exc.
R. B. 744.

Mr Dickenson Cont.

Implied a Warranty of the Bill and Bills are often
received on the Credit of Indor — Suppose the contrary Doctrine,
a Bill would not become valuable in Proportion to the Indorsers.

2. Bl Rep. 1235. Till the Bill is satisfied.
Even a Dr is not discharged
only the Party, on whom the
Execution was enforced

2. Wil. 262.
Appeal. 29

Mr Gibson

Mr Gibson Cro.

The Law considers the Maker of a promissory Note as the Drawer and Acceptor of a Bill of Exc.

If there is Negligence — or if there is a mis-con-duct given to the Drawer, the Indsor is discharged.

Bul. 273. — a Cont. if he assume Paid.

2. Wil. 253. Wil 48.

L. R. 744.

The Indsor has a plain Path to tread — The Notice to Indsor is not only to inform that the Money is not paid; but that he must pay it.

Term. Rep.

Mr Chapman Cont

The Acceptance of Bill operates in Favour of Indsor as to that Point

Bul. 271. Marius.

A obtains judgment against B. and issues a fa. fa. against him: The Sheriff, before executing it, pays the Debt himself; and then takes B. in Execution upon the fa. fa. Is the Sheriff liable to an Action?

12th March 1791

Should the Supreme Executive Authority of the State be invested with the Power of pardoning Criminals

Mr James Wilson

1. There should be such a Power

2. It should be vested in the Exec of the Laws.

The different Powers in government – three different Duties

The Certainty of Correction and Uncertainty of Pardon – Error in case cannot be provided for – Hence Courts of Equity in civil Jurisprudence – The Power of Pardon remotest.

In W. B. H. Hoch's Observations only prove that the Power of pardoning should not be blended with that of judging.

Perfect Legislation – a powerful Idea

Inconveniences of no pardoning Power

The Ex. Mag. should propose the public Opinion. Post.

He proposes many Avenues of public Information.

Without this Power he cannot administer the Laws in Mercy

Vat.

Mr R. Morris Cont.

There ought to be no Power of Pardoning.

The Laws should be strictly executed

The

The Certainty of Punishment should never be infringed

Penal Laws as well as others may be construed by the Spirit as well as by the Letter.

Reason in Opposition to amiable Feelings not rarely attended to.

Let the Laws be few; but always observed.

Bec.

Or. Com.

7 Mr Read Pro

In Civil Cases there are different Appeals — But a Man cannot be tried twice for the same Crime. — Consequently a common Pardonary is without a Check — and it is liable to the same Mistakes as others — Hence the Propriety of pardoning.

If there was no Power of Pardon — the Judge would determine according to his Feelings.

Penal Statutes are not to be taken by Equity.

The Decemvirs Laws.

Bec.

If penal Laws are not to be construed by the Spirit; then ought to be a Power of pardoning.

Thus

This Power should be vested in the Ex. Department.

The Power exercised in Massachusetts.

Persia

Vall. Com. on Bar.

Ancient and Particular States.

Mr Hopkinson Cont.

1. Should there be such a Power?

2. Where should it be placed?

How shall we say that Law is a Rule, when it may be dispensed with by the Executive Power

If the Laws are just; they ought to be executed

Changes in Favour of the Criminal – Concealment – The Humanity of Jurors – Incertainty of Testimony – The Form of the Law

No new Trial on Acquittal

The strongest Argument agt. the Severity of Laws is, that it produces Incertainty

Pardons produce an unequal Dispensation of Justice

Pardons seldom reclaim

Crimes arise from a depraved Disposition

Pardons

Pardons not natural to a Democracy — when the Offence is against the Law.

If neither the Law nor the Courts can do Justice; can the Governor do it

2. The Power of writing any where, should be vested in the Judiciary Department.

Saturday 19th March 1791.

On the Question — A. obtains Judgment

Mr Rodney Pro — 1. The Liberty of the Subject.

2. The Duty of Shff. and the Nature of Ca. Sa.

Bl. 124. 129. 134. 136. 137.

The Origin of Sheriffs. their Election — their Duty. Some Hands Imprisonment for Debt not awful. Dallas. 213.

5. Bonds of Execution.

The Payment of the Money to Shff discharges the ~~Money~~ Judgt. and the Exlon. 2. Show. 137. 3. Lev 203. Sir 1074. Nay. 136

Mr.

Mr W. Morris Cont.

1. The Pay.t by Def.t is a Purchase – and Rec.t by Pl.ff. on Assign.t of the Bill.

Noy 106.

Ballar. 139. Assignt. after Action.

An Assigned Jud.t in b. b. of Prom.s

2. The Pay. by Def.t on Rec.t of Pl.ff is no Disch.

10 Vin. 434. 12. Mod. 230.

3. The Def.t must execute his Writ in order to make a proper Return and to secure himself from an Action for a false Return.

Cro. 504. A Release of Payment would not have been a good Return.

4 Bac. 452.

10 Vin. 434. 236.

Mr Thomas Pro.

The Right of Liberty – enforced

3. and 16 Ch. 1 Hab. Corp. in Ch. 2.

29. Mag. Char.

Noy. 106.

Com. Dig. 302. Cro. 404 Jac. Ex. 5. Co. 93.

If Debts assignable – By the Pay.t the Suit is determined. The Situation of each of the Parties is altered.

Suppose a third Person had discharged the Debt. When the Def.t had determined the Suit, could he execute the Writ?

The

The Arg.t ab inconvenienti — The Damages ought to be high — It was a daring Violation of his Trust and Duty.

Mr Condy. Cont.

1. Whether an Action would lie if Def. had paid the Money

2. Whether in the present Case

Cro. 208. 209. 2. Lev. 203. 2. Jones. 97. 2. Mod. 214

Here is a Contradiction of the Record by Waller in pas

11. Vin. 39. 27.

The present Plf is a perfect Stranger to the Transaction betw the former Plf and Def.

The Action may be pursued in the Name of the Plf.

Liberty ought to be coupled with Honesty.

Mr Thomas in Reply —

Montgomery 69 g

69-4154

Auditors No 3.